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# TESTIMONY OF KENNETH E. RASKE

President, GNYHA

Joint Assembly-Senate Hearing on the 2016-17 NYS Executive Budget

January 25, 2016

GREATER NEW YORK HOSPITAL ASSOCIATION

*Over 100 years of helping hospitals deliver the finest patient care in the most cost-effective way.*

# HOSPITAL FINANCIAL CONDITION

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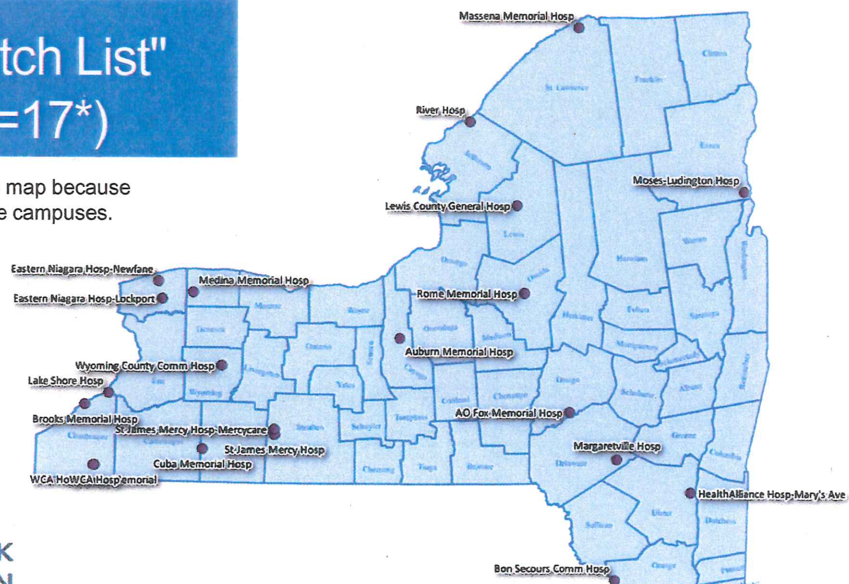
# Hospital Financial Conditions are Poor

## There are 28 hospitals across the State on a Department of Health "Watch List"

| Safety net institutions (e.g., critical access, high Medicaid) | They have fewer than 15 days cash on hand | They have no remaining assets that can be monetized | They have exhausted all efforts to obtain financing elsewhere |
|---|---|---|---|

# Upstate "Watch List" Hospitals (N=17*)

*There are 20 markers on the map because some hospitals have multiple campuses.

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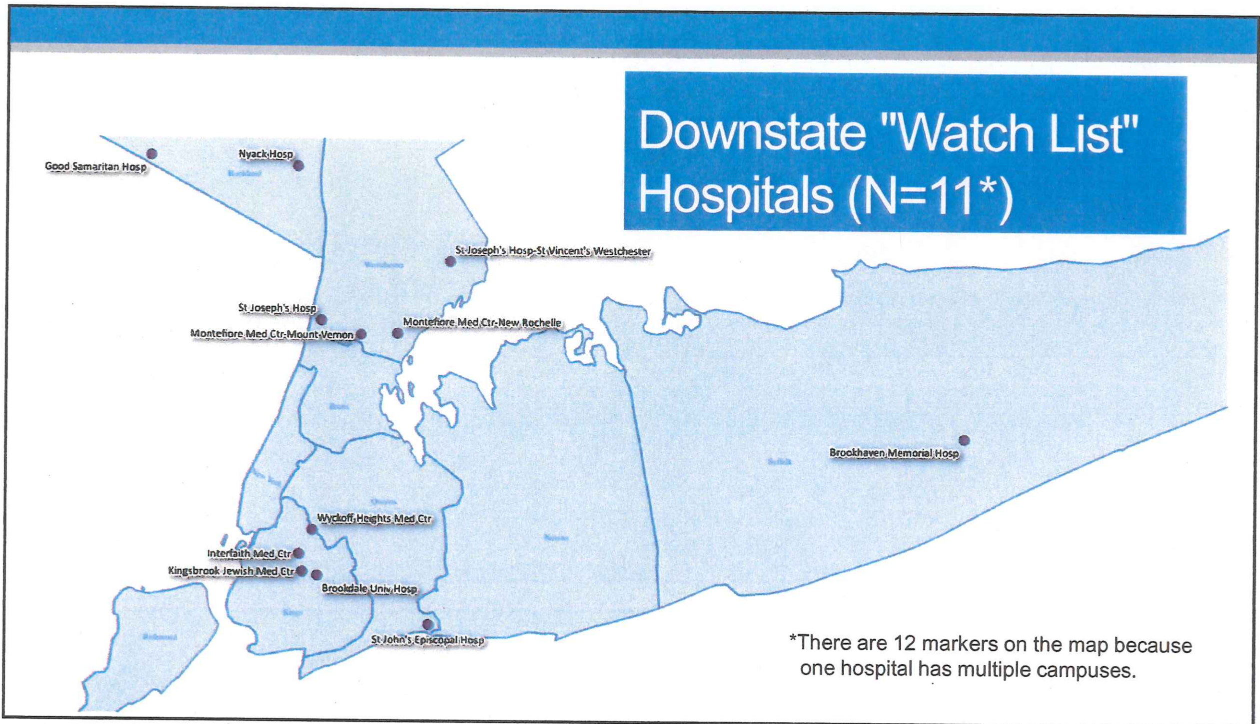


# The Executive Budget Provides Critical Funding

The Executive budget continues funding for the Vital Access Provider Program and the Vital Access Provider Assurance Payment program (VAPAP)

VAPAP funds are provided to watch list hospitals to keep them at "break even"

Longer-term solution: Provide funding to enable hospital systems to "adopt" and help transform financially distressed institutions

The Executive budget contains $195 million in capital funds for this purpose

# HEALTH REPUBLIC FAILURE

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## Health Republic Failure = Hospital Destabilization

**Hospital Losses > $190 million**

Does not include physicians, pharmacies, other providers

**GNYHA Supports Creation of a Health Insurance Guaranty Fund**

Funded by other insurers, only in case of an insolvency

Other insurers, who benefit by gaining new customers, would pay a *temporary assessment* rather than an ongoing tax

# NYS Needs a Health Insurance Guaranty Fund

## FACTS ABOUT HEALTH INSURANCE GUARANTY FUNDS

New York is the only state without a health insurance guaranty fund.
Washington, DC and Puerto Rico also have them.[1]

Every state has a property and casualty insurance guaranty fund, including New York.
Washington, DC, Puerto Rico, and the U.S. Virgin Islands also have them.[2]

New York has not used its property and casualty insurance guaranty fund since 2010 (data unavailable for 2015).[3]

1 National Association of Life and Health Insurance Guaranty Associations
2 National Conference of Insurance Guaranty Funds
3 Ibid.

# MINIMUM WAGE INCREASE

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## Minimum Wage Increase Creates Funding Challenges for Medicaid Providers

| When Fully Phased in (gross $): | |
|---|---|
| Incremental hospital costs:[1] | $570 million annually |
| Incremental home care costs:[2] | $1.7 billion annually |
| Incremental nursing home costs:[2] | $188 million annually |
| OPWDD providers:[2] | $270 million annually |

All of these providers rely on Medicaid for substantial portions of their budgets

Sources: [1] Healthcare Association of New York State; [2] 1199 SEIU United Healthcare Workers East

## If the Minimum Wage is Increased, It Must be Funded

Otherwise, high-Medicaid providers and high-Medicare providers will have no way to afford the increase

If Medicaid funding is provided, it should be provided *outside* of the Medicaid Global Cap or the Cap should be increased

Otherwise this funding will cause the State to pierce the growth cap – set at 3.4% this year – and Medicaid will have to be cut elsewhere to stay within the Cap

# MEDICAL LIABILITY REFORM

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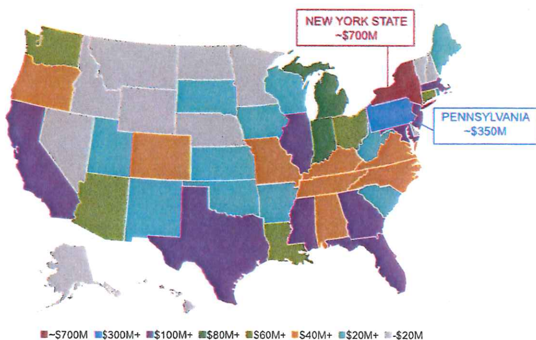
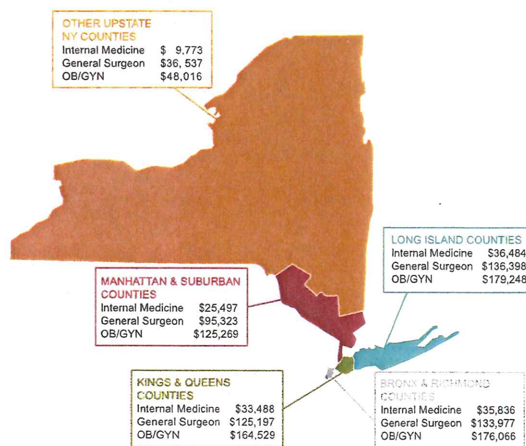
## New York State Has the Highest Costs in the Nation

TOTAL PAYOUT AMOUNTS BY STATE




TOP STATE PER CAPITA

NYS MEDICAL MALPRACTICE COVERAGE PREMIUMS




Sources: Diederich Healthcare & Excellus BCBS

## Because of the High Costs, Balance is Necessary

### Last year the Assembly passed "Lavern's Law"

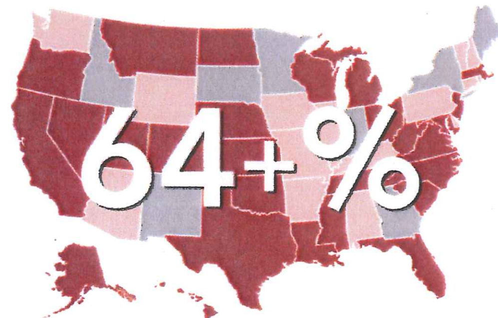
| | | |
|---|---|---|
| Extends the statute of limitations from 2.5 years from the date of occurrence to 2.5 years from the date of occurrence ***or*** 2.5 years from the date that the plaintiff knew or could reasonably have known that the alleged negligence occurred and that such negligence caused an injury, but no later than 10 years after the date of occurrence | Longest statute of limitations in the country | Would increase premium costs by at least 15% plus would require a significant increase in reserves |

## States with Discovery Statutes Usually Have Caps to Balance Costs of the Discovery Statutes

STATES WITH DISCOVERY RULES

STATES WITH CAPS ON DAMAGES

STATES WITH SHORTER SOLS THAN NY




27/42 STATES WITH DISCOVERY RULES **ALSO** HAVE CAPS ON DAMAGES

# NURSE STAFFING

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## "Victory for Safe Staffing"

In 2015, there were successful negotiations across the State with nurses unions. Many of the negotiations led to increases in the number of nurses hired.

This is how staffing decisions should be made – locally, with management and nurses coming together to determine what is needed in each institution and each individual unit

"What a win for staffing ratios! They were a part of past contracts but now there is acknowledgement by management that they must make them a reality in every hospital, on every unit. Every patient is a VIP."

– NYSNA press release praising the collective bargaining process, 8/6/15

# SFY 2016–17 EXECUTIVE BUDGET

## IMPORTANT HOSPITAL-RELATED HEALTH CARE PROVISIONS

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| PROVISION | EXECUTIVE BUDGET | GNYHA POSITION |
|---|---|---|
| Global Cap | The State-share Medicaid spending Global Cap applies mainly to Department of Health (DOH) Medicaid spending and is tied to the 10-year rolling average of the medical component of the U.S. consumer price index (CPI), which is currently 3.4%. If spending increases more than the Cap, DOH can unilaterally cut payments to all providers to bring spending within the Cap.<br><br>State-share Medicaid spending is projected to increase to $17.7 billion in SFY 2016–17 (and to $18 billion when spending from other departments is included).<br><br>The Executive extends the Global Cap and its shared savings provisions through 2017–18.<br><br>The Executive budget contains no funding to ensure that Medicaid providers can afford the proposed minimum wage increase. | GNYHA **supports** a Global Cap increase for the upcoming State fiscal year and the shared savings provisions, but given the fact **that the annual Global Cap increase has decreased significantly since it was first enacted in the 2011–12 budget**, when it allowed for growth of 4%, GNYHA believes adjustments should be considered so that Medicaid cuts are not necessary to stay within the cap.<br><br>**Medicaid providers should not be held accountable for spending increases related solely to enrollment growth or unilateral State actions, such as an increase in the minimum wage.**<br><br>GNYHA **opposes** transferring funds under the cap for other, non-Medicaid purposes.<br><br>GNYHA **supports** State funding for the Medicaid costs incurred by health care providers associated with the Governor's proposed minimum wage increase.<br><br>GNYHA **opposes** the failure to increase Medicaid payment rates to support a higher minimum wage. Medicaid payments rates and the Global Cap should be increased to enable providers to absorb increased labor costs. In the absence of higher Medicaid payment rates, funding for the minimum wage increase should be made available outside the Global Cap to ensure that financially-strapped Medicaid providers don't face payment cuts. |
| Vital Access Provider Assurance Program (VAPAP), Value-Based Purchasing Quality Incentive Program (VBP QIP), and Vital Access Providers (VAP) | Provides $449 million (gross) to fund the anticipated need of financially distressed safety net hospitals participating in the VAPAP and VBP QIP. The full allocation is needed to provide adequate funding for current participants (28 hospitals statewide) and any hospitals newly eligible in 2016–17.<br><br>Provides $212 million (gross) for the VAP program to meet current commitments and $30 million (State share) to fund limited new initiatives in 2016–17. | GNYHA strongly **supports** continued funding for financially distressed safety net hospitals through the VAPAP, VBP QIP, and VAP programs. Adequate funding for these programs is critical to allow participating hospitals to maintain operations while a longer-term, multi-year transformation plan for financial sustainability is developed and implemented. |

*GNYHA is a dynamic, constantly evolving center for health care advocacy and expertise, but our core mission—helping hospitals deliver the finest patient care in the most cost-effective way—never changes.*

| PROVISION | EXECUTIVE BUDGET | GNYHA POSITION |
|---|---|---|
| Capital Access Pool | Provides $195 million for health care transformation and to help health systems "adopt" safety net institutions. (The budget re-appropriates $700 million for health care transformation in Brooklyn and $355 million primarily for hospitals in other areas of the State, over and above the DSRIP-related $1.2 billion over seven years included in the SFY 2014–15 budget.) | GNYHA strongly **supports** capital investment to help many of New York's financially struggling institutions transform into financially viable providers. GNYHA **supports** an increase in the $195 million fund. |
| Health Insurance Guaranty Fund | No provision. | Consumers and health care providers were severely harmed by the failure of Health Republic. GNYHA strongly **supports** the enactment of a health insurance guaranty fund, **which every other state** has (NYS already has such funds for other lines of insurance, including property and casualty insurance and life insurance). The health insurance guaranty fund would enable consumers of a bankrupt insurer to continue to receive care from their own doctors and hospitals because it would guarantee that the consumer's providers would be paid. It would only be funded in the rare case of a health insurance company's insolvency through a temporary assessment on insurers, who will benefit from gaining customers from insolvent insurers. |
| Qualified Medicare Beneficiaries (QMBs) | Reduces the Medicare Part C cost-sharing amounts Medicaid pays providers on behalf of low-income or "qualified" Medicare beneficiaries by capping payments at the amount Medicaid would have paid for a service, rather than the amount Medicare pays. | GNYHA strongly **opposes** this $23 million cut to providers, which would have a negative impact on QMBs. |
| Medical Liability: Medical Indemnity Fund (MIF) | Enrolls certain children eligible for the MIF into Child Health Plus (CHP) for their basic health needs, thus drawing down a Federal match. This proposal also transfers funding for poison control centers to fund the State share of CHP. Estimated State savings: $36.2 million.<br><br>MIF Expansion: no provision. | GNYHA seeks more information on the impact of this proposal on MIF-eligible children, the MIF itself, and the impact on poison control centers.<br><br>GNYHA strongly **supports** expanding eligibility for the MIF to cover the future health care needs of all individuals with neurological injuries. (Under current law, the MIF covers only neurologically impaired newborns.) |
| Medical Liability: Excess Medical Malpractice Fund | Extends the physician excess medical malpractice pool through June 30, 2017.<br><br>The proposed budget would change the allocation methodology to prioritize specialties at high risk for medical malpractice liability costs and in geographic areas where medical malpractice liability costs are high.<br><br>The proposed budget would cut the current funding level from $127.4 million to $102.4 million. | GNYHA **supports** the extension of the excess medical malpractice pool, but strongly **opposes** the $25 million cut in the pool.<br><br>GNYHA is concerned about the impact of the allocation changes and seeks more information. |

| PROVISION | EXECUTIVE BUDGET | GNYHA POSITION |
|---|---|---|
| Medical Liability: Provisions to Increase Hospital, Physician Costs | No provisions.<br><br>However, the Governor, Senate, and Assembly have expressed support for liberalizing the statute of limitations (SOL) by moving from:<br>1. SOL of 2.5 years from the date of occurrence (with exceptions for children [10 years]; discovery of foreign objects [1 year from discovery]; and 2.5 years from the end date of continuous treatment for the same injury complained of) to<br>2. an SOL of 2.5 years from the date of occurrence or 2.5 years from the date that the plaintiff knew or could reasonably have known that the alleged negligence occurred and that such negligence caused an injury, but no later than 10 years after the date of occurrence.<br><br>This proposal, known as Lavern's Law, would increase medical liability insurance premiums by at least 15% and, because the Assembly proposal would apply retroactively, would have an immediate, negative impact on medical liability commercial and self-insurance reserves. | GNYHA is willing to discuss enactment of a reasonably tailored discovery statute as part of a comprehensive reform package; however, given that NYS already has the highest medical liability insurance costs and payouts in the nation, any amendment that would increase the medical malpractice statute of limitations—and therefore increase costs—would need to be offset by amendments to reduce the already astronomical costs of medical liability coverage and payouts in NYS. The version of Lavern's Law that passed the Assembly last year would be the most liberal discovery statute in the nation (and one of the few not offset by a cap on non-economic damages). It would increase hospital and physician premiums (already the nation's highest for some specialties) by at least 15% annually. Additionally, due to its retroactive application, it would require significant increases in the reserves of every medical malpractice insurer and self-insured trust in the State.<br><br>GNYHA adamantly **opposes** other proposals requested by the New York State Trial Lawyers Association, including an increase in the statutory limits on attorney contingency fees, which would mean less money for patients and higher awards paid by financially strapped hospitals and other health care providers. **Repealing the limitation on contingency fees would increase hospitals' premiums by at least 25%. Combined with the passage of a discovery statute such as the version passed by the Assembly last year, the overall increase could reach 40%.** |
| Managed Long Term Care (MLTC) and Transportation Costs | Removes transportation costs from MLTC premiums and, as in the regular Medicaid managed care program, contracts with a State contractor to manage transportation costs. | GNYHA strongly **supports** this proposal. Hospitals spend far too much time arranging transportation for MLTC enrollees. In NYC there are 34 MLTC plans, all with different transportation rules, requirements, forms, and contracted transportation firms. The State contractor model has been successful in the regular Medicaid managed care program and has produced huge efficiencies. |
| Social Work Licensure | Extends for five years the licensure requirement exemption for social workers working in programs regulated, operated, funded, or approved by OMH, DOH, SOFA, OCFS, DOCCS, OTDA, OASAS, OPWDD, and/or local governmental units or social services districts. | GNYHA strongly **supports** this provision. The State estimates that additional costs resulting from the new licensure requirements would be $325 million annually. |

| PROVISION | EXECUTIVE BUDGET | GNYHA POSITION |
|---|---|---|
| Comprehensive Psychiatric Emergency Program (CPEP) | Extends authorization for the CPEP until July 1, 2020. Under current law the program would expire on July 1, 2016. | GNYHA strongly **supports** this proposal. |
| Health Information Technology | Provides $40 million for the State Health Information Network of New York (SHIN-NY) and for development of the All-Payer Claims Database. | GNYHA is studying this proposal. |
| Sharing Behavioral Health Clinical Records | Permits facilities operated or licensed by OMH to share clinical records with health homes, behavioral health organizations, managed care plans, and other entities authorized to coordinate health care services for Medicaid beneficiaries. | GNYHA **supports** this proposal. The quality improvements and efficiencies that care coordination can produce cannot be realized without the responsible sharing of clinical information. This is particularly important for meeting DSRIP goals. |
| Limited Service Clinics | Creates a new licensure category for limited service clinics (commonly known as "retail clinics"). | GNYHA is working with members to determine a position on this proposal. |
| Workers' Compensation | Increases the time limit that an employer can direct an employee to use a preferred provider organization from 30 days to 120 days. | GNYHA **supports** this proposal. |